

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

TRIAL COURT DEPARTMENT
NANTUCKET DISTRICT COURT
DOCKET NO. 1888 CR 0598

COMMONWEALTH OF MASSACHUSETTS

VS.
KEVIN S. FOWLER

RULING ON SUMMONSING REQUESTS

After hearing and pursuant to Mass.R.Crim.P. 17(a)(2), the court rules as follows with respect to Defendant's requests for pretrial discovery of documents, recordings, and objects.

NANTUCKET CLUB CAR, LLC

The court denies Defendant's request for Nantucket Club Car's records of credit card transactions or other non-cash transaction, as well as his request for employment records. The records sought by the defendant will, according to the defendant, "lead to the identification of possible" or "potential percipient witnesses." As stated in this court's prior ruling, the Supreme Judicial Court has "emphasized, rule 17(a)(2) is not a discovery tool to be 'invoked merely for the exploration of potential evidence.'" *Commonwealth v. Lampron*, 441 Mass. 265, 269 (2004).

The court does direct the Nantucket District Court Criminal Clerk's Office to issue a summons to Nantucket Club Car, LLC, located at One Main Street, Nantucket, MA 02554, requiring the pre-trial production of any surveillance footage in the possession of Nantucket Club Car, LLC taken within the Club Car restaurant between, July 7, 2016 at 5:00 p.m. and July 8, 2016 at 3:00 a.m.

The surveillance footage shall be produced at the Nantucket District Court by 10:00 a.m. on June 3, 2019.

LAW OFFICES of MITCHELL GARABEDIAN

The court denies Defendant's request for records from The Law Offices of Mitchell Garabedian. The court again notes that to the extent the defendant is requesting information that Garabedian has turned over to the commonwealth, the obligations of the commonwealth under Mass.R.Crim.P. 14 to share that information with the defendant, as well as Defendant's ability to cross-examine the alleged victim at trial, will assure Defendant's right to present an effective defense.

[REDACTED]

The court allows Defendant's request to examine the contents of [REDACTED]'s phone for the period from July 7, 2016 to December 31, 2017. To that end, the commonwealth is ordered to turn over to the defendant a copy of the entire extraction it obtained from [REDACTED]'s phone, both paper and USB drive. After review of the material by the defendant, he may submit a request to the court, under seal, for meta data relating to those texts he deems relevant to his case.

HEATHER UNRUH

The court denies Defendant's request for the phone records of the alleged victim's mother, Heather Unruh. She was not a percipient witness to alleged event and her statements to prospect witnesses or their statements to her, if any, are not properly the subject of a Rule 17 request. If there is probable cause to believe that Unruh has intimidated a witness (as suggested by the defendant), the commonwealth can prefer charges.

FURTHER PRETRIAL

The court further orders the parties to submit to the court, by June 3, 2019, a report on the status of mandatory discovery. The parties may wish to continue the pretrial scheduled for that date to a date in July or perhaps conduct the pretrial hearing by video conference. The court is amenable to either option.

Any further discovery requests, with exception of meta data requests related to [REDACTED]'s phone, shall only be filed following the commonwealth's compliance with mandatory discovery.

So ordered,



April 30, 2019

Thomas S Barrett, Presiding Justice, Nantucket District Court